IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1432 of 1999

in

SPECIAL CIVIL APPLICATION No. 5239 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATWARBHAI JIVANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:
MR MI HAVA for Appellant
Ms.Harsha Devani, ASSTT GOVERNMENT PLEADER for

Respondents

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 31/08/2001

C.A.V. JUDGEMENT (Per : MR.JUSTICE RAVI R.TRIPATHI)

The appellant being aggrieved of the judgement and order dated 8.10.1999 passed by the learned Single Judge in Special Civil Application No.5239 of 1996 filed the present Letters Patent Appeal challenging the same on various grounds, such as, that the learned Single Judge has erred in law in holding that on account of Urban Land Ceiling Repeal Act 15 of 1999 the petition filed herein stands abated.

2. Learned advocate for the appellant submitted that the learned Single Judge has committed an error in holding that,

> "From plain reading of section 4 of the Act, this writ petition will abate. The words, "shall abate" in section 4 of the Act are mandatory and such proceeding "shall abate" without any further orders of the Court if the same were pending immediately before the commencement of the Act. There can be no dispute that this writ petition was pending immediately before the commencement of the Act. Hence the petition will abate."

3. Mr.Hava, learned advocate submitted that the learned Single Judge also committed an error in holding that the proceedings under sec.21 of the Principal Act, which were pending before the competent authority immediately before commencement of this Act, will also abate in view of sec.4 of the Repeal Act. Mr.Hava submitted that in fact the State Government had granted exemption to the land bearing survey no.43/1 under sec.20. Therefore, the said land was excluded from the 'holdings' of the petitioner and on that basis the competent authority had passed an order dated 16.10.1987. It is against this order of the competent authority that the State Government filed a revision application under sec.34 of the Urban Ceiling Act, 1976 (hereinafter referred to as "the Act"). The Government vide order

dated 22.2.21989 was pleased to quash the order passed by the competent authority dated 16.10.1987 and remanded the matter to the competent authority for deciding afresh. The competent authority on remand passed the impugned order dated 19.10.1989 and declared the land admeasuring 5244.97 square meters out of survey no.43/1 as surplus land. This order was passed on the basis of information received by the competent authority from the State Govt. that agricultural exemption granted to the petitioner regarding survey no.43/1 was cancelled. The petitioner had filed a revision application against the order dated 19.10.1989, which was rejected by an order dated 20.10.1985. The proceedings under sec.34 were closed. The petitioner had submitted a scheme under sec.21 of the Act with respect to the land bearing survey no.43/1 which was rejected by the competent authority on 5.9.1985. Against this order the petitioner preferred an appeal before the Urban Land Tribunal under sec.33 of the Act. The Tribunal by its order dated 30.9.1996 set aside the order of the competent authority and directed to restore the petitioner's claim under sec.21 to the file for consideration on merits. Mr.Hava submitted that the learned Judge was pleased to hold that even those proceedings under sec.21 will abate in view of sec.4 of the Repealing Act, which results into denial of judicial scrutiny of the orders passed by the authorities.

4. Mr.Hava, learned advocate for the appellant submitted that the interpretation which is sought to be placed on the provisions of sec.4 of the Repealing Act, 1989 is not a correct interpretation in view of the judgement of this Court (Coram : D.M. Dharmadhikari, CJ & B.C. Patel, J.) dated 18.7.2000 in Special Civil Application No.6678 of 1999 and other matters wherein this Court while considering the provisions of sec.4 of the Repealing Act has held that,

> ".. .. The language used aforesaid can never mean that the power of the court, tribunal or authority to examine whether the order passed or purported to have been passed under the principal Act, while it was in operation, was valid or not, has been taken away. Any other interpretation on the language of section 4 would be unconstitutional, because the Legislature by no provision can completely take away the power of judicial review. The learned Single Judge, in the portion of his judgement quoted above, has taken a view that as an effect of section 4 of the Act of 1999, even writ proceedings before the High Court would abate. We find no ground to

take a contrary view and overrule his judgment on the interpretation of section 4 but we consider it necessary to add a rider or explanation so as to construe the provision in a manner to make it constitutional valid. In the impugned provision of section 4, the word "abate" if construed harmoniously in the light of the constitutional provisions, would mean that the proceedings under the Repealed Act would not be continued on the repeal because as a result of repeal of the principal Act, the proceedings thereunder are rendered infructuous. In our considered opinion, provisions of section 4 cannot be read and construed to infer that the effect of abatement would be that even validity of actions taken under the Repealed Act and examination of its provisions for the purpose of ascertaining whether any rights and liabilities thereunder are saved, would be outside the scrutiny of courts, tribunal or authorities. The inference of such effect of section 4, as to take away completely power of judicial scrutiny, would be a clear negation of the legal and constitutional powers of the courts, tribunal and authorities under the two enactments. .. .."

5. Mr.Hava submitted that in the aforesaid judgement the Court has given an illustration to make the aforesaid view more clear:

".. .. The independence of judiciary is also a basic part of the Constitution. The provisions of sec.4 having an effect of abatement of pending proceedings in relation to an 'order made or purported to be made' under the Repealed Act, cannot be construed to completely take away the power of the courts, tribunal and authorities as judicial and quasi judicial bodies to examine the validity of the order or action taken under the Repealed Act and to find out the impact of repealing Act on the rights and liabilities of the land owners and the State. An example will make the legal position clear. Under Repealed Act, suppose an agricultural land which is not covered by the definition of 'urban land' under section 2(o) of the Repealed Act of 1976 is clubbed with other urban land of an owner and declared excess to be deemed to have been acquired and vested in the State. Thereafter, it is taken possession of. It would be saved and retained by the State as an effect of section 3

(1)(a) of the Repealing Act of 1999. Constructed as sought to be put on section 4 would result in abatement of case of such owner pending before any authority, court or tribunal and would deprive the land owner from contending that he did not hold any excess urban land, such land was not governed by the Repealed Act of 1976, and was wrongly treated to have been acquired and vested in the State and its possession was wrongly taken from him by force and coercive methods. Such unjust result cannot be intended to have been provided in section 4 of the Repealing Act of 1999."

6. Mr.Hava then pointed out that the observations of this Court in the said judgement whereby the Court held that the provisions of sec.4 providing for abatement of all proceedings under the Repeal Act can only mean that on repeal of the Principal Act, all proceedings under it to the extent they are not saved and left unaffected by the Repealing Act, would not be proceeded with as having been rendered infructuous. The Court clarified this situation and further observed that,

".. .. All such pending proceedings in which previous operation of the Repealed Act is challenged can never be deemed to have been abated, as the pending cases would require some adjudication and decision on the question of legal effect of the abatement provided in section 4 of the Act. "Purport" is a well known word in legal usage and has many shades of meaning to be ascertained in the context of the provisions under construction. In the present context it cannot be construed to mean that proceedings found to be de hors the Repealed Act, or beyond jurisdiction of the concerned authorities, who had undertaken it, although prima facie invalid, would be beyond the scope of judicial scrutiny.
(emphasis supplied)

7. Mr.Hava, learned advocate for the appellant submitted that in the present case, notification under sec.10(3) of the Act was wrongly issued on 26.4.1990 and paper possession of the excess vacant land admeasuring 5244 sq meters of survey no.43/1 was illegally taken on 5.12.1995 although the appellant's valid application under sec.21 submitted on 29.1.1991 was pending with the competent authority. Mr.Hava submitted that application under sec.21 was submitted within 1129 days of revocation of agricultural exemption and as per law laid down by

this Court in the matter of Vijaysingh D. Parmar v. Competent Authority & Additional Collector & another, reported in 1996(2) GLR 522 and also in the matter between Ravjibhai Kashibhai Patel v. Urban Land Tribunal & Ex Officio Secretary of Govt. & another, reported in 1996 (2) GLR 815, the competent authority is bound in law to decide such application, if filed within the statutory period notwithstanding any proceedings under sec.10(3) or sec.10(5) of the Act. Mr.Hava submitted that in the case before this Court, in the matter of Vijaysingh D. Parmar (supra), the petitioner was holding certain agricultural lands and in respect of the said land, he had obtained exemption under sec.20 of the ULC Act to carry out agricultural operations. By order dated 31.5.1979 said exemption came to be cancelled. Thereafter, the petitioner submitted an application under sec.21 of the ULC Act to put up a scheme for accommodation of weaker sections of the society. An application was made under sec.21 on 4.3.1991. It was rejected on 9.11.1991. This application under sec.21 was rejected by the authority on the ground that the petitioner had failed to prove as to on which date the application for exemption of agricultural property under sec.20 of ULC Act was made. It was this order which was challenged before this Court wherein the Court observed that,

> "3. .. .. A mere look at the impugned orders would show that rejection of an application under sec.21(1) of the ULC Act is unjust, perverse and illegal requiring interference of this Court exercising extraordinary, discretionary and equitable writ jurisdiction for the following reasons:
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> 4. Nothing has been shown in the impugned orders as to why and how proof of date of submission of the application under sec.20 of the ULC Act was necessary and/ or relevant for the purpose of adjudicating upon merits of the application under sec.21 of the ULC Act. Both the authorities have mechanically held that in absence of proof of date of submission of the application under sec.20 of the ULC Act, the application for exemption under sec.21 is required to be rejected. There is neither logic nor legality in such an approach."

8. Mr.Hava submitted that in the present case also the application under sec.21 was made within the time prescribed under the proviso (b) to Rule 11 of the ULC Urban Land (Ceiling & Regulations) Rules, 1976 and that

said application is required to be decided on merits.

9. Mr.Hava submitted that in the judgement in the case of Ravjibhai Kashibhai Patel (supra), 1996 (2) GLR 815, the Court has held that,

> "It becomes clear from a bare perusal of the aforesaid relevant statutory rule that ordinarily the application under sec.21(1) of the Act has to be made within 1,139 days from the commencement of the Act. Proviso (b) thereto, however, carves out an exception in favour of a parcel of land enjoying exemption inter alia under sec.20(1) of the Act. In that case, the limitation of 1,139 days would start from the date of revocation or withdrawal of such exemption. The aforesaid statutory provision contained in proviso (b) to Rule 11 of the Rules is quite clear in its meaning. there could not be any other interpretation in that regard."

10. Mr.Hava submitted that in the present case also after the exemption under sec.20 was cancelled qua the land bearing survey no.43/1 an application under sec.21(1) was filed and the same was pending. Not only that even the Tribunal had found substance and therefore, by its order dated 30.9.1996 allowed the appeal field by the appellant and rejected the cross appeal filed by the competent authority and remanded the application under sec.21 for decision on merits, in accordance with law. Mr.Hava submitted that the learned Single Judge has erred in holding that even those proceedings have abated.

11. Mr.Hava submitted that this Court has held that even when a notification under sec.10(3) and/ or 10(5) is issued the appeal is maintainable. To substantiate his submission, he relied upon the judgement of this Court in the matter of Dahyabhai Manorbhai Patel v. The Competent Authority & Additional Collector, Unit No.2, Vadodara and another, reported in 1987 (2) GLR 1396. In this judgement this Court applying the rule of harmonious interpretation observed as under :

> "7. The Urban Land Tribunal has read the provisions of sec.10(3) of the Act in isolation. Reading the provisions of secs.10(3) and 10(5) of the Act in isolation, one is likely to reach to the conclusion that after the land is vested absolutely in the State Govt. free from all encumbrances with effect from the date so specified in the Notification, an appeal cannot

be entertained because if appeal is entertained, how the land which is absolutely vested in the Govt. can be divested. But such an isolated reading of a particular provision of the statute and thereafter giving interpretation to the same is not permissible. In the case of Darshan Singh Balwant Singh & another v. The State of Punjab, AIR 1953 SC 83, in para 10 of the judgement the Supreme Court has observed as follows:

"It is a cardinal Rule of interpretation that the language used by the legislature is the true depository of the legislative intent, and that words and phrases occurring in a statute are to be taken not in an isolated or detached manner dissociated from the context, but are to be read together and construed in the light of the purpose and object of the Act itself."

In above view of the matter, provisions of sec.10 and particularly that of subsecs.(3) and (5) cannot be read without reference to the provisions of sec.33 of the Act which confers right of appeal on an aggrieved person."

8. xx xx xx

9. xx xx xx

"10. If one reads the provisions of Urban Land (Ceiling & Regulation) Act, 1976 in the aforesaid manner it is very clear that the legislature did provide for an appeal against an order passed by the Competent Authority under sec.9 of the Act. The right of appeal is not made conditional on the publication or non publication of the Notification under sec.10 of the Act. In a given case the Urban Land Appellate Tribunal may grant stay of further proceedings or may even grant conditional stay of further proceedings or may even refuse to grant stay. In cases where stay is not granted at all, the Competent Authority shall proceed further and notification as provided under sec.10 will be issued and published in the Govt. Gazette. In such cases it would be absurd to hold that even though the appeal is filed within time, but on account of the fact that during the pendency of the appeal Notification under secs.10(3) and 10(5) have been issued and therefore, the appeal has become infructuous, Such can never be the intention of

the legislature. Therefore, the last part of the phrase occurring in sec.10(3) of the Act "such land shall deem to have vested absolutely in the State Govt." cannot be read so as to defeat the provisions of the Act, i.e. the provisions of sec.33 of the Act. If this construction is not adopted the right of appeal can be frustrated by not granting stay of further proceedings or by not registering the appeal immediately."

"11. Such an interpretation would be both absurd and unreasonable. Therefore, it has to be avoided. The only reasonable interpretation that can be given to the provisions of secs.10(3) and 10(5) of the Act is that the vesting of the land in the Govt. would be subject to the result of the appeal under sec.33 of the Act. In cases where aggrieved party may succeed in appeal and the final order passed by the Competent Authority under sec.9 is set aside (or varied or modified), the further consequential steps under sec.10 also will have to be taken by the Govt. so as to bring the same in conformity with the final order under sec.9 of the Act. Just as the order under sec.9 is set aside (or varied or modified) by the Urban Land Appellate Tribunal similarly the subsequent steps under sec.10 of the Act will have to be taken by the Govt. and it will have either to set aside (or vary or modify) its earlier actions."

"12. Reading both the provisions in the aforesaid manner, the reasoning of the Appellate Tribunal that because Notification under sec.10(3) of the Act was issued and therefore, the appeal was not maintainable cannot be sustained. The learned counsel for the respondents has not been able to show any provision of law on the basis of which it can be held that once the declaration under sec.10(3) of the Act is published in the official Gazette, right to challenge the final order under sec.9 of the Act passed by the Competent Authority conferred upon an aggrieved party under sec.33 of the Act gets extinguished. As stated hereinabove, right conferred by statute cannot be extinguished by adopting an unreasonable and unusual manner of interpretation of statute."

12. Mr.Hava, learned advocate submitted that in view of the judgement of the Full Bench of this Court in the

matter of Messrs Avanti Organisation v. Competent Authority & Additional Collector, Urban Land Act, Rajkot and another reported in 30 (1) GLR 586, the competent authority could not have proceeded beyond the stage of section 10(1) stage and in any case could not have issued Notification under sec.10(3) of the Act, when the petitioner's application under sec.21 was pending since 29.1.1991, Mr.Hava submitted that the learned Single Judge has committed an error in observing that the said judgement is not applicable to the cases pertaining to sec.21 of the Act. Mr.Hava submitted that the Division Bench of this Court in the matter of Samrathben Manilal Chokshi & another v. State of Gujarat reported in 1994 (1) GLR 203 has held that,

> "The State is under a duty to stay proceedings beyond the stage of sec.10(2) of the Act both if an exemption application under sec.20 or sec.21 is preferred."

The Division Bench has further held that,

> "The view taken by the Single Judge that as per 1984 (1) GLR 322 proceedings need be stayed only where the exemption application is under sec.20 is incorrect."

13. Mr.Hava, learned advocate submitted that an affidavit in reply was field on behalf of respondent no.2 in Special Civil Application wherein para 6 reads as under:

> "It is submitted that Notification under section 10(1) of the Act, with respect to the lands in question was published in the Gujarat Government Gazette on 21st December 1989. A copy of the aforesaid Notification dated 21.12.1989 is annexed herewith and marked as ANNEXURE 'I'. It is further submitted that the Notification under section 10(3) of the Act was published in the Gujarat Govt. Gazette on 26th April 1990. A copy of the aforesaid Notification dated 26.4.90 is annexed herewith and marked as ANNEXURE II. It is submitted that thereafter notice under section 10(5) of the Act was served on the petitioner on 31st May 1990. A copy of the notice dated 31.5.90 is annexed herewith and marked as ANNEXURE III."

Para 8 of the said affidavit in reply reads as under :

"It is submitted that the petitioner had submitted a scheme under sec.21 of the Act, with respect to survey no.43/1 Block No.70. The competent authority by an order dated 5th September 1995 rejected the said scheme. Being aggrieved by the aforesaid order of the competent authority the petitioner had preferred an appeal before the Urban Land Tribunal under the provisions of section 33 of the Act. The Urban Land Tribunal by an order dated 30th September 1996 was pleased to set aside the order of the competent authority and the competent authority was directed to restore the petitioners scheme under section 21 to file for consideration on merits. It is submitted that thereafter, the new schedule of rates was called for from the specified officer and Superintending Engineer. However, the same are still not received and therefore, the application is still pending and no final decision has been taken thereon."

14. Mr.Hava submitted that thus, it is clear from the affidavit in reply also that the application under sec.21 was pending even on the date of filing of the affidavit, i.e. 25.9.1999. In view of that the authorities could not have proceeded further beyond the stage of sec.10(2). Mr.Hava submitted that in view of that, the notifications under sec.10(3) and 10(5) are of no consequence and therefore, taking of the possession as contended by the authorities under sec.10(5) on 5.12.1995 is illegal. Therefore, land in question is required to be restored to the appellant.

15. Mr.Hava submitted that the learned Single Judge has also erred in appreciating the decision of the Honourable Supreme Court in the matter of Smt. Darothi Clare Parreira & others v. State of Maharashtra, reported in AIR 1996 SC 2553. Mr.Hava relied on the observations made by the Honourable Supreme Court which are quoted by the learned Single Judge in his judgement, which read as under:

"Having regard to the scheme of the Act, it cannot be said that until the application under S.21 or S.20 is considered and disposed of, the competent authority has no power to have the notification under S.10(3) vesting the excess land in the Govt. published. The very language of sec.20 and 21 and the exercise of the power thereunder would arise only when the land stands vested in the Govt. The power of examination and

exemption would arise only when the Govt. becomes the owner and the erstwhile owner seeks to obviate the hardships under S.20 or to subserve the housing scheme for weaker sections under S.21 as envisaged thereunder. Thereat, the Govt. is required to consider whether the proposals made by the erstwhile owner for undertaking the scheme as envisaged under S.21 or hardships as envisaged under S. 20 for exemption would merit consideration."

16. Mr.Hava submitted that the learned Single Judge ought to have appreciated that a Notification under sec.10(3) vesting the land in Govt. is not prohibited merely because of pendency of applications under sec.20 and 21 of the Principal Act. But the same are to be, 'subject to an appeal' as held by this Court and succinctly laid down in para 12 of the judgement in the case of Dahyabhai (supra).

17. As against the submissions made by Mr.Hawa, Ms.Harsha Devani, learned Assistant Government Pleader for the respondents has submitted that even if it is held that the petition does not abate, the appellant has no case on merits for the purpose of setting aside the impugned orders passed by the competent authority on 10th October 1989 and the order dated 20th October 1995 passed by the Government and the notification issued under section 10(3) on 26th April 1990 and these orders may not be quashed and there is no question of restoration of the symbolic possession. The impugned orders passed by the competent authority and the Government and the notification issued under section 10(3) dated 26th April 1990 have been sought to be defended on the basis of the provisions of law to which reference has already been made hereinabove.

18. Having given our thoughtful consideration to the rival submissions made before us, we find in the light of the decisions referred to in the earlier part of this order and particularly, the decision dated 18th July 2000 rendered by the Division Bench in Special Civil Application No.6678 of 1999 that the petition does not abate and the same has to be decided on merits. We also find that the impugned order passed by the learned Single Judge even otherwise cannot be allowed to stand because while holding that the petition abates he has also dealt with the merits of the case against the orders which were impugned in the petition.

19. Therefore, while holding that the petition does

not abate, we set aside the impugned order passed by the learned Single Judge and find it to be a fit case to remand the matter back to the learned Single Judge to hear the parties on merits of the case afresh with the further observation that nothing said, held or observed by the learned Single Judge on the merits of the case in the order which we have set aside shall come in the way of the parties in the remanded proceedings and while considering the matter in the remanded proceedings, the learned single Judge shall take his own decision afresh on merits and decide the petition accordingly.

20. This Letters Patent Appeal is partly allowed in the terms as above with no order as to costs.

(M.R. Calla, J.)

(Ravi R. Tripathi, J.)

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